

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Appellee,	)	2 CA-CR 2008-0276
	)	DEPARTMENT A
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
LOUIS CHRISTOPHER DALZELL,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20080074

Honorable John S. Leonardo, Judge

AFFIRMED

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Terry Goddard, Arizona Attorney General  
By Kent E. Cattani and Alan L. Amann

Tucson  
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ESPINOSA, Judge.

¶1 After a jury trial, appellant Louis Dalzell was convicted of one count each of possession of a dangerous drug (methamphetamine) for sale and possession of drug paraphernalia. The trial court found Dalzell had one historical prior felony conviction and sentenced him to five years' imprisonment on the first count and to a concurrent, one-year prison term on the second. On appeal, Dalzell argues that police lacked a sufficient basis to stop the vehicle he was driving and the court therefore erred in denying his motion to suppress the evidence discovered in the subsequent search of the vehicle. Finding no error, we affirm.

### **Factual and Procedural Background**

¶2 We view the facts in the light most favorable to sustaining the trial court's ruling, considering only the evidence presented at the suppression hearing. *State v. Teagle*, 217 Ariz. 17, ¶2, 170 P.3d 266, 269 (App. 2007). On December 28, 2007, while on routine patrol and driving behind a white Honda, Pima County Sheriff's Deputy Santiago Hernandez conducted a computer records check of both the Honda's license plate number and its registered owner. Although results of the license plate check were normal, the registered owner's name revealed a suspended driver's license and the notation "all registrations suspended," which Hernandez understood to mean that the registrations of any vehicles under that owner's name were suspended. At the time, he did not notice the name of the registered owner was that of a woman.

¶3 Hernandez activated his overhead lights and stopped the Honda, which Dalzell was driving. Dalzell told Hernandez he had borrowed the car from a friend who had recently bought it. When asked for his driver's license, Dalzell said it had been suspended in Florida. After obtaining Dalzell's name and personal information, Hernandez conducted "a warrants check" and a "motor vehicle check," which revealed a nonextraditable Florida warrant for Dalzell's arrest and a suspended driver's license. Hernandez then arrested Dalzell for driving on a suspended license. During a subsequent inventory search of the vehicle, the officer found methamphetamine and drug paraphernalia.

¶4 At an evidentiary hearing on Dalzell's motion to suppress the evidence discovered in the car, Hernandez testified he had stopped the vehicle for two reasons. First, he thought the registered owner, who had a suspended license, might be driving the car and, second, because his computer indicated that all registrations for that particular owner were suspended, he understood that "[the] vehicle itself [could not] be on the roadway." Hernandez further testified it is unlawful to drive a vehicle with a suspended registration and the only way he could confirm whether the car's registration was suspended was to conduct a stop.

¶5 Based on Hernandez's testimony, the trial court concluded there was reasonable suspicion for the stop and denied Dalzell's motion. The court explained "the computer . . . indicated that all registrations associated with the registered owner were suspended. And since the vehicle was registered to that registered owner, the suspension of

all registrations logically referred to that vehicle.” A jury subsequently found Dalzell guilty of both charges, and this appeal followed. We have jurisdiction under A.R.S. §§ 13-4033(A) and 12-2101(B).

### Discussion

¶6 Dalzell challenges the trial court’s denial of his motion to suppress, arguing the court erred in finding Deputy Hernandez had reasonable suspicion to stop the vehicle. In reviewing a trial court’s decision on a motion to suppress evidence based on an alleged Fourth Amendment violation, we defer to the court’s factual findings unless they are clearly erroneous, but we review legal conclusions *de novo*. See *State v. May*, 210 Ariz. 452, ¶ 4, 112 P.3d 39, 41 (App. 2005). “[T]he question of whether the police had reasonable suspicion to conduct an investigatory stop is a mixed question of law and fact that we review *de novo*.” *In re Ilono H.*, 210 Ariz. 473, ¶ 3, 113 P.3d 696, 697 (App. 2005).

¶7 As Dalzell points out, “[a]n investigatory stop of a vehicle constitutes a seizure under the Fourth Amendment.” *State v. Fornof*, 218 Ariz. 74, ¶ 5, 179 P.3d 954, 956 (App. 2008). “[A] police officer may make a limited investigatory stop in the absence of probable cause if the officer has an articulable, reasonable suspicion, based on the totality of the circumstances, that the suspect is involved in criminal activity.” *Teagle*, 217 Ariz. 17, ¶ 20, 170 P.3d at 271-72. “Evidence derived from a stop not based on reasonable suspicion is ‘fruit of the poisonous tree’ and must be suppressed.” *Fornof*, 218 Ariz. 74, ¶ 5, 179 P.3d at 956, quoting *State v. Richcreek*, 187 Ariz. 501, 506, 930 P.2d 1304, 1309 (1997).

¶8 We first address Dalzell’s contention that Hernandez lacked reasonable suspicion to stop him because, as Dalzell claims, “the mobile computer . . . told [Hernandez] that the Honda itself was legally on the road, and it would be illegal only for [the registered owner] to be operating the vehicle on the road.” But this is a mischaracterization of Hernandez’s testimony. To the contrary, he testified that, if all registrations are suspended for a vehicle’s owner, any vehicle registered to that owner is suspended, even if the computer check of the vehicle’s license plate did not so indicate: “[U]sually . . . if the vehicle is suspended, when you run just the license plate it will come back with an abstract saying the registration is suspended,” but “every now and then . . . if you run the registered owner from the registration, their license will come back suspended in effect for whatever they did or whatever points or . . . fines they had and that all registrations, meaning any vehicle they own, cannot be driven on the road.” To the extent Dalzell maintains the evidence concerning the vehicle’s registration status was conflicting, it was for the trial court to resolve such conflicts, *see May*, 210 Ariz. 452, ¶ 4, 112 P.3d at 41, and we have no basis to conclude that the court’s findings on this issue are clearly erroneous.

¶9 Dalzell further argues Hernandez’s suspicion was unreasonable because the name of the registered owner was female but the driver of the car, Dalzell, was a man. Citing *United States v. McSwain*, 29 F.3d 558 (10th Cir. 1994), and *United States v. Grigg*, 498 F.3d

1070 (9th Cir. 2007),<sup>1</sup> Dalzell contends that, “[e]ven if Hernandez could not see the driver of the Honda while the cars were moving, once he stopped the Honda and approached the driver, he very quickly noticed that the driver was a man” and thus no longer had reasonable suspicion of a “violation of any kind.”<sup>2</sup> But, even if the cited cases were controlling,<sup>3</sup> this argument fails because it addresses only one of the reasons Hernandez gave for the stop—his suspicion that the registered owner was driving the vehicle. Assuming, as Dalzell argues, that once Hernandez discovered the driver was not a female, he no longer had reason to suspect the registered owner was driving, he still had reasonable suspicion that the vehicle’s registration was suspended based on the information revealed by the computer check. *See* § 28-2153(A) (prohibiting operation of unregistered vehicles); *see also* § 28-4072(A) (providing for suspension of driver’s license and vehicle registration for failure to satisfy judgment for damages arising out of ownership, maintenance, or use of motor vehicle),

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<sup>1</sup>In *McSwain*, the Tenth Circuit held an officer exceeded the scope of the underlying justification for the stop—to confirm the validity of the vehicle’s temporary registration sticker—when he approached the vehicle on foot and was able to see the sticker was valid but nevertheless proceeded to question the driver. 29 F.3d at 560-61. In *Grigg*, the Ninth Circuit held an investigatory stop was unreasonable in part because the officer had not “pursued alternate available opportunities to gather information.” 498 F.3d at 1083.

<sup>2</sup>Dalzell argues at length that, although the name of the registered owner of the vehicle was not elicited at the evidentiary hearing, it was undisputed it was a woman’s name based on the contents of Dalzell’s motion to suppress. We need not address this issue, however, because it does not affect our resolution of the case.

<sup>3</sup>Arizona state courts are not bound by federal appellate courts’ interpretation of federal constitutional protections. *See State v. Allen*, 216 Ariz. 320, n.4, 166 P.3d 111, 116 n.4 (App. 2007), *cert. denied*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 70 (2008).

§ 28-4135(E)(1) (providing for suspension of driver’s license and vehicle registration for failure to comply with financial responsibility requirements).<sup>4</sup>

¶10 Because the trial court’s factual findings and legal conclusions were not erroneous, Dalzell has not demonstrated any violation of his Fourth Amendment rights. Accordingly, the trial court properly denied his motion to suppress.

**Disposition**

¶11 For the foregoing reasons, Dalzell’s convictions are affirmed.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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JOHN PELANDER, Chief Judge

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<sup>4</sup>The other authorities Dalzell cites likewise fail to establish the trial court erred in denying his motion to suppress. *See Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (holding police may not stop vehicle to check license and registration absent reasonable suspicion); *State v. Ochoa*, 112 Ariz. 582, 584, 544 P.2d 1097, 1099 (1976) (same).